



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor David DIDUCH et al. **Examiner:** Glenn K. DAWSON
Serial No.: 10/084,283 **Confirmation No.** 7097
Filed: February 26, 2002 **Group Art Unit:** 3731
Title: SUPERELASTIC SUTURE PASSING DEVICES AND METHODS

MAIL STOP AMENDMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

RESPONSE TO RESTRICTION REQUIREMENT AND ELECTION OF SPECIES

Sir:

In reply to the Office Correspondence mailed November 3, 2004 (the "Office Correspondence"), in which a one (1) month shortened period for reply is December 3, 2004, please consider this Response to Restriction Requirement and Election of Species, and consider the following remarks:

Response to Restriction Requirement

The Examiner required Applicants to select from one of three identified inventions, designated as Invention I (claims 24-30 and 35-48, "drawn to a surgical device"), Invention II (claim 31, "drawn to a method of making a surgical device") and Invention III (claims 32-34, "drawn to a method of using a surgical device"). Applicants elect Invention I (claims 24-30 and 35-48) without traverse.

Response to Election Requirement


In addition to requiring restriction of the claims, the Examiner also required Applicants to elect a single species from among nine (9) species asserted to be encompassed by the claims. While not necessarily agreeing with the Office Correspondence on the presence or number of species, to fulfill their duty, Applicants elect species IV (Fig. 9a) for initial examination in this application. Claims 24, 25, 47 and 48 are generic. Claims 26-30, 35-44, 46 and newly added claims 49-51, presented in the simultaneously filed preliminary amendment, are sub-generic and include the elected species.

Applicants submit that, if the elected species is found to be allowable, Examiner must continue to examine the full scope of claims 24-30 and 35-51 to the extent necessary to determine the patentability of these pending claims. That is, Applicants submit that Examiner must extend the search to a reasonable number of the non-elected species, as is the duty according to MPEP § 803.02 and 35 U.S.C. § 121.

Applicant respectfully requests issuance of a Notice of Allowability. If the undersigned attorney can assist in any matters regarding examination of this application, Examiner is encouraged to call him directly at the number listed below.

Respectfully submitted,

Date: 22 November 2004


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